IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 5516 of 2007(F)

PETITIONERS:

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1. M. SHAJAHAN, MADEENA TRADERS,
   M. PUDUR, GOVINDAPURAM, PALAKKAD.

2. S. MOHAMMADALI, STAR ENTERPRISES,
   10/1086, S.H.K. COMPLEX, BPL JUNCTION,
   KOOTTUAPATHA, PALAKKAD.

3. V. UNNIKRISHNAN, GOLDEN TRADERS,
   KODUVAYUR, PALAKKAD.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENTS:

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1. ASST.COMMISSIONER (KVAT)
   COMMERCIAL TAXES SPECIAL CIRCLE,
   PALAKKAD.

2. COMMISSIONER OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM.

3. STATE OF KERALA, REPRESENTED BY
   SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

WP(C).No.5516 of 2007-F

Dated this the 26th day of February, 2007.

JUDGMENT

The petitioners are dealers in live chicken. Feeling aggrieved by the omission of the respondents to issue sufficient number of authenticated delivery notes in Form No.15, they had approached this court by filing W.P.(C).No.5116 of 2007. The said writ petition was disposed of with the following direction.

> *" I heard the learned Government Pleader also. If advance tax is paid in respect of the consignments, there is no possibility of any evasion of tax. In view of the above position, sufficient number of authenticated delivery notes in Form 15 shall be issued to the petitioners, having regard to the volume of the live chicken, brought by them. This direction is issued subject to the undertaking given by them before this Court that they will pay advance tax without demur, in respect of the consignments brought by them."*

2. The petitioners submit, pursuant to the said judgment, the Commissioner, Commercial Taxes has issued Ext.P12 Circular dated 15-2-2007. The said Circular reads as follows:

> *Attention is invited to the direction of the Hon'ble High Court of Kerala in WP (C) 5116 of*

2007 (H) on 14-2-07 that subject to the petitioners paying advance tax without demur in respect of the consignments brought by them, sufficient number of authenticated delivery notes in Form 15 shall be issued to the petitioners having regard to the volume of chicken brought by them.
All officers are directed to comply with the orders of the Hon'ble High Court observing the following procedure:

i). The tax due in respect of each consignment noted in each leaf of Departmental Delivery Note shall be obtained in advance by the assessing authority.

ii). The assessing authority will endorse on each leaf of the Departmental Delivery Note the number of boxes, the total quantity of live chicken permitted on the basis of that Departmental Delivery Note calculated at the rate of 30 kg per box, the details of advance tax payment made at the office of the assessing authority, and the check post through which the consignment should be brought.

iii). Each leaf of the Departmental Delivery Note should be given a validity period of one week from the date of endorsement, and that period should also be endorsed on that leaf.

iv). Check post officials should regulate the entry of live chicken on the basis of the details in the Departmental Delivery Note.

v). Security deposits shall be collected for any excess in quantity over that permitted in that Departmental Delivery Note.

vi). Other instructions issued through Circular 4/2007 in respect of transport of consignments of live chicken with regard to the destination,

etc. will continue to apply.

All assessing authorities may allow genuine dealers in live chicken the above facility on their request subject to the conditions prescribed above."

They are aggrieved by condition numbers i, ii, iii, v mentioned in the said Circular. They say they may be permitted to pay the advance tax at the check post. They may also be issued with sufficient number of authenticated delivery notes, so that they can pay the advance tax and duly fill up the delivery notes and can transport the live chicken to various destinations.

3. Heard the learned Government Pleader for the respondents. The learned Government Pleader submits, advance tax can be received at the check post also. This submission is recorded.

4. As per sub rule 16 of rule 58 of the Kerala Value Added Tax Rules, the petitioners are entitled to get sufficient number of delivery notes. The relevant portion of the rule reads as follows:

"A blank book of Delivery Note of Form No.15 shall be obtained from the assessing authority, on payment of a fee at the rate of seventy five rupees per book of fifty forms".

5. In view of the above Rule, the first respondent is directed to issue sufficient blank authenticated delivery notes in Form No. 15 to the petitioners on making proper applications and paying requisite fee. The undertaking of the petitioners to pay advance tax is recorded.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,
JUDGE.

MS